

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 25, 1997

UNITED STATES OF AMERICA,)	
Complainant)	
)	8 U.S.C. 1324a Proceeding
vs.)	
)	OCAHO Case No. 97A00098
ACRA MANOR CORP.,)	
D/B/A ACRA MANOR RESORT,)	
F/K/A ANDREWS AVE.,)	
Respondent)	

FINAL DECISION AND ORDER

Appearances: Lisa Fried, Esquire, Immigration and Naturalization
Service, United States Department of Justice,
New York, New York, for complainant;
Val Fede, President, Acra Manor, for respondent.

Before: Administrative Law Judge McGuire

On February 21, 1997, the United States Department of Justice, Immigration and Naturalization Service (complainant/INS), issued and served upon Acra Manor Corp. d/b/a Acra Manor Resort f/k/a Andrews Avenue Restaurant Corp. (respondent) Notice of Intent to Fine (NIF) NYC 96 E0 000 302. That single-count citation alleged that respondent had committed 46 paperwork violations of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a, for which civil money penalties totaling \$13,800 were assessed.

The NIF alleged that respondent had violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to ensure proper completion of section 1 of the Forms I-9 and also by having failed to properly complete section 2 of the Forms I-9 for each of the 46 individuals named therein, all of whom were hired by respondent after November 6, 1986, for employment in the United States. Civil money penalties of \$300 were assessed for each of those 46 alleged violations, or a total of \$13,800.

The wording of the NIF clearly advised the respondent of its right to file a written request for a hearing before an Administrative Law Judge assigned to this Office provided that such written request be filed within 30 days of its receipt of the NIF.

On March 4, 1997, respondent timely filed a written request for hearing.

On April 22, 1997, complainant filed the single-count Complaint at issue, realleging the 46 violations set forth in Count I of the NIF, as well as the requested \$13,800 total civil money penalties sum.

On April 25, 1997, a Notice of Hearing on Complaint Regarding Unlawful Employment, along with a copy of that Complaint, were mailed to the respondent by certified mail. Respondent acknowledged receipt of the Complaint on April 28, 1997.

On May 28, 1997, respondent's president Val Fede filed a document identified as Motion to Dismiss Complaint Against Acra Manor Corporation. Attached to that document was a single-page letter, dated May 21, 1997, from Fede stating that "In answer to the service of complaint dated May 2, 1997 against Acra Manor Corp. I hereby deny these allegations."

On June 10, 1997, complainant filed a pleading captioned Complainant's Motion to Dismiss Certain Names in Complaint and For Summary Decision as to Liability on the Remaining Names in the Complaint. In that motion, complainant requested that the eight (8) allegations involving the following individuals be dismissed:

- 7. Maria Deleo
- 14. Christopher Fremgen
- 27. Shanon McGinley
- 31. Karin Overbaugh
- 33. Brandon Perino
- 38. Chelsea Sitcer
- 39. Seith Smith
- 41. Bevin Spencer

On September 3, 1997, by way of an appropriate order, complainant's motion to dismiss the violations concerning those eight (8) individuals from the Complaint was granted. That order also granted complainant summary decision on the remaining 38 facts of violation set forth in Count I of the Complaint. The parties were invited to submit concurrent written briefs by Friday, September 26, 1997, concerning the appropriate civil money penalties to be assessed for those 38 violations, utilizing the five (5) criteria set out at 8 U.S.C. § 1324a(e)(5), 8 C.F.R. § 274a.10(b)(2)(1996).

On September 17, 1997, at the parties' request, an order was issued granting the parties until Monday, October 27, 1997, to file their penalty briefs.

On October 24, 1997, respondent filed a letter brief, in which it urged that no civil money penalties be assessed.

On October 27, 1997, complainant filed a Motion for Approval of Complainant's Proposed Civil Monetary Penalty Amounts with Memorandum of Points and Authorities, in support of its assertion that the previously-assessed total civil money penalties sum of \$11,400 was reasonable, or \$300 for each of the proven 38 paperwork infractions.

The five (5) statutory criteria set forth at 8 U.S.C. § 1324a(e)(5), which must be utilized in assessing penalties for paperwork violations, include (1) size of the business of the employer being charged, (2) the good faith of the employer, (3) the seriousness of the violation, (4) whether or not the individual was an unauthorized alien, and (5) the history of prior violations. That provision also provides that a civil money penalty shall be assessed "in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred".

Accordingly, since respondent has been found liable for these 38 paperwork violations, that firm must be assessed a total penalty sum ranging from between the statutorily mandated minimum sum of \$3,800 and \$38,000.

Complainant quite accurately notes that a failure to properly complete the Form I-9 is always a serious violation and persuasively argues that the recommended penalties should be aggravated owing to that factor.

Complainant concedes that 1) respondent is a small business, 2) that respondent acted in good faith, 3) that the individuals involved were authorized aliens, and 4) that the respondent has no history of previous violations.

In having assessed civil penalties of \$300 for each of those 38 paperwork violations, INS assessed penalties only \$200 above the \$100 minimum sum for each of these 38 violations, or upwardly some 22% in the \$900 discretionary assessment spectrum.

In view of that fact, I find that INS acted most reasonably in having assessed \$300 civil money penalties for each of the 38 violations at issue and therefore the total civil penalties sum of \$11,400 is being affirmed.

Order

Having determined that respondent violated the paperwork provisions of 8 U.S.C. § 1324a in the manners described in the single-count Complaint at issue, it is ordered that the appropriate total civil money penalty sum for the 38 proven violations is \$11,400, as previously assessed.

Joseph E. McGuire
Administrative Law Judge

Appeal Information

This Decision and Order shall become the final order of the Attorney General unless, within 30 days from the date of this Decision and Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324a(e)(7), (9) and 28 C.F.R. § 68.53 (1996).

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November, 1997, I have served copies of the foregoing Final Decision and Order to the following persons at the addresses shown, in the manner indicated:

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